



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER  
CUNNINGHAM, T

ART UNIT  
1644

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Advisory Action

Application No.  
08/653,294

Applicant(s)  
Clayberger et al.

Examiner  
Thomas Cunningham

Group Art Unit  
1644



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 4 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Sep 30, 1998 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

### ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
  - ☐ they raise the issue of new matter. (See note below).
  - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The term "consisting essentially of" as used in proposed claim 1 is indefinite as to the length and AA composition of the claimed compound.

### ☒ Applicant's response has overcome the following rejection(s):

112/1 issues over "variant" (but see below) and enablement of a/a, a/b, and b/b dimers.

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

### ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none


Claims objected to: none

Claims rejected: 1-21

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other *Is the phrase "consisting essentially of" intended to encompass sequence variants or refer to the length of the recited compound or both? A more definite functional limitation than "immunomodulating activity" might help to address this issue. The 103(a) rejection is maintained, but could be dropped if the claims are limited to dimers with unexpected activities over the compounds taught by Olsson.*

  
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PRIMARY EXAMINER  
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